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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/726,254      | 12/01/2003  | Nina Mishra          | 10003555-2          | 3546             |

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
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EXAMINER

BARBEE, MANUEL L

ART UNIT PAPER NUMBER

2857

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/726,254

Applicant(s)

MISHRA ET AL.

Examiner

Manuel L. Barbee

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-17 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,5-17 and 19-22 is/are allowed.
- 6) ☒ Claim(s) 2 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 2 and 16 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 8 and 18 of prior U.S. Patent No. 6,684,177. This is a double patenting rejection.

Claim 2 and 16 of the present application contain the added text "prior to clustering" for the same step also found in claims 8 and 18 of the '177 patent. While this text is not found in claims 8 and 18 of the '177 patent, the fact that the step is recited immediately before the clustering step in claims 8 and 18 suggests that the merging should happen before the clustering. Further, the original claims 2 and 16 in the application for the '177 patent are identical to claims 2 and 16 in the present application and were indicated to contain allowable material. Since those claims were combined with independent claims to form the patent claims 8 and 18, the implication is that the steps are executed in the order that they appear in the claims.

### *Allowable Subject Matter*

3. Claims 1, 3, 5-14, 17 and 19-22 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: Neither Leung et al. nor Fayyad et al. teach a method or apparatus for clustering a set S of n data points to find k final centers that includes portioning the set S into P disjoint pieces, determining a set of k intermediate centers for each disjoint piece, assigning each data point in each disjoint piece to the nearest one of the k intermediate centers, weighting each of the k intermediate centers in each set and clustering the weighted intermediate centers together to find the k final centers using a specific error metric and a clustering method, as shown in claims 1, 15, 21 and 22.

### ***Response to Arguments***

5. Applicant's arguments filed 18 October 2004 have been fully considered but they are not persuasive. With regard to the double patenting rejection of claims 2 and 16, Applicant states that systems could be envisioned that infringe claims 8 and 18 of US Patent 6,684,177, but not claims 2 and 16 of the present application. Specifically, Applicant states that a method or article that merges weighted centers during or after clustering would be literally encompassed by the claims 8 and 18 of the '177 patent. However, as stated above, the order of the steps in the claims implies the order of execution. In fact, the first four steps of the claims must be performed in the order presented since each step uses information from a previous step. Further, the disclosure of the '177 patent (col. 3, line 52 - col. 4, line 9) and the originally presented versions of claims 8 and 18 in the '177 patent all indicated that the merging step must be executed before the clustering step. Therefore the claim limitations do not

encompass merging during or after the clustering step and claims 2 and 16 of the present application are identical to claims 8 and 18 of the '177 patent.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 571-272-2212. The examiner can normally be reached on Monday-Friday from 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0976.

mlb  
November 15, 2004



MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800